

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

M.B., : CIVIL ACTION
Plaintiff, :
vs. :
ROOSEVELT INN LLC, et al., : NO. 21-2984
Defendants. :

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K.R., : CIVIL ACTION
Plaintiff, :
vs. :
ROOSEVELT INN LLC, et al., : NO. 21-3218
Defendants. :

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C.A., : CIVIL ACTION
Plaintiff, :
vs. :
ROOSEVELT INN LLC, et al., : NO. 21-3222
Defendants. :

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(CONT.)

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3 B.H., : CIVIL ACTION
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4 Plaintiff, :
 :
5 vs. :
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6 ROOSEVELT INN LLC, et al., : NO. 21-3225
 :
7 Defendants. :

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9 A.H., : CIVIL ACTION
10 :
11 Plaintiff, :
12 :
13 vs. :
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15 ROOSEVELT INN LLC, et al., : NO. 21-3277
16 :
17 Defendants. :

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Plaintiff,
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vs.
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ROOSEVELT INN LLC, et al.,
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Defendants.

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NO. 21-3277

11 :
12 vs. :
13 ROOSEVELT INN LLC, et al., : NO. 21-3277
Defendants. :

12 ROOSEVELT INN LLC, et al., : NO. 21-3277
13 Defendants. :

16 C.A., : CIVIL ACTION
: :
17 Plaintiff, : :
: :
18 vs. : :
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19 WYNDHAM WORLDWIDE : NO. 21-3392
CORPORATION, et al., : :
20 : :
Defendants. :

17 Plaintiff, :
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18 vs. :
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19 WYNDHAM WORLDWIDE : NO. 21-3392
 CORPORATION, et al., :
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18 vs. :
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19 WYNDHAM WORLDWIDE : NO. 21-3392
CORPORATION, et al., :
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 Defendants. :

19 WYNDHAM WORLDWIDE : NO. 21-3392
CORPORATION, et al., :
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Defendants. :

20 Defendants.

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23 (CONT.)

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3 B.H., : CIVIL ACTION
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5 Plaintiff, :
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7 vs. :
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9 WYNDHAM WORLDWIDE : NO. 21-3396
10 CORPORATION, et al., :
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12 Defendants. :
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10 K.R., : CIVIL ACTION
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12 Plaintiff, :
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14 vs. :
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16 WYNDHAM WORLDWIDE : NO. 21-3401
17 CORPORATION, et al., :
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19 Defendants. :
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17 A.H., : CIVIL ACTION
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19 Plaintiff, :
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21 vs. :
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23 WYNDHAM WORLDWIDE : NO. 21-3430
24 CORPORATION, et al., :
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26 Defendants. :
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24 (CONT.)
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1 (CONT.)

2 A.H., : CIVIL ACTION
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 4 Plaintiff, :
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 6 vs. :
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 8 ROOSEVELT INN, LLC, et al., : NO. 21-3914
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 10 Defendants. :
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14
15 (CONT.)

1 APPEARANCES: (CONT.)

2

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For Ashoka Investment & Management in the B.H.
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6

7

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Official Court Reporter

9

James A. Byrne U.S. Courthouse

601 Market Street

10

Philadelphia, PA 19106

(215) 779-5578

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(Transcript produced by machine shorthand via C.A.T.)

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1 (Deputy Clerk opened court)

2 THE COURT: Hello, please take your seats.

3 Whoever's going to be arguing, please come up front and if

4 you're all going to argue, you can stay there and be

5 uncomfortable. Well, to add to your come-back-to-court

6 experience today, I've arranged for a criminal case jury to

7 finish their deliberations. I'm told they've reached a

8 verdict and they're going to be coming in and delivering a

9 verdict so you all get the extra thrill of watching what you

10 may never have seen before which is a 10b-5 securities fraud

11 criminal case come to a conclusion. So, you know, I don't

12 know whether you're going to put that on your timesheets or

13 not, but there we go. Speaking of which, it looks like it's

14 full employment oral argument set aside for the issues posed

15 by the motion for a remand in the case and I'm just going to

16 use the name Roosevelt Inn at Docket Number 21-2984 to refer

17 to all the various records, but just to note for the record,

18 it's Captions 2984, 3392, 3222, 3396, 3225, 3401, 3218, 3430,

19 3277, 3914. If I missed any of your cases, it was

20 inadvertent, but let me know. I am happy to listen to you in

21 any order that you'd like, presumably you know somebody's

22 planning to do something, so we don't have to have a lot of

23 repetition particularly since I will be holding you up a

24 little bit to take this verdict. The cases were removed and

25 then the plaintiffs filed motions for remand. So I would

1 assume I will first hear from the plaintiffs who wish to have
2 the cases returned to State Court, but if it works better for
3 you all to do it in some other fashion, I assure you that if I
4 can't follow along, certainly my law clerk can.

5 How would you like to proceed?

6 MS. MARKS: Good afternoon, Your Honor. Emily Marks
7 from Kline & Specter on behalf of the plaintiffs M.B., C.A.,
8 B.H. and K.R. I think it makes sense as plaintiffs' counsel
9 to go first.

10 THE COURT: Fine. Let me first then take a full
11 attendance. I am actually looking at this long list where
12 you've already done the sign-in, but I want to give you all a
13 chance to use your vocal cords and Ms. Feldman here will take
14 down the names of everybody who is here.

15 So, Ms. Marks, I have you already. Who else?

16 MR. HUGHES: Good afternoon, Your Honor. Peter
17 Hughes, Dilworth Paxson LLP, also for M.B., C.A., B.H. and
18 K.R.

19 THE COURT: Okay.

20 MR. HEINOLD: Good afternoon, Your Honor. K. Andrew
21 Heinold of Saltz Mongeluzzi & Bendesky for the plaintiff A.H.

22 THE COURT: Thank you. Would you mind if I just
23 said hello to all of you at the end as opposed to each of you
24 individually? Okay, let's keep going.

25 MR. MARION: Charles Marion and my colleague,

1 Justina Byers, we're with Blank Rome, on behalf of we call
2 them the Roosevelt Defendants, the debtors, and the related
3 nondebtors, Roosevelt Inn, Roosevelt Motor Inn, UFVS
4 Management and Yagna Patel.

5 MR. ELIADES: Good afternoon, Your Honor. Dan
6 Eliades, K&L Gates, for Wyndham Worldwide Corporation, Wyndham
7 Hotel Group, LLC, Wyndham Hotels and Resorts, Inc., Wyndham
8 Hotel Management, Inc., and Days Inn Worldwide, Inc.

9 MS. FOREMAN: Good afternoon, Your Honor. Melanie
10 Foreman and my colleague, Tom Wagner, from Marshall Dennehey
11 on behalf of Alpha-Centurion Security Inc. in the M.B.
12 lawsuit.

13 MR. SMITH: Good morning, Your Honor. There aren't
14 enough seats up there so I was just hanging back here.

15 THE COURT: Actually, in my world, it's afternoon.

16 MR. SMITH: Oh. Good afternoon. Matthew Smith from
17 Saul Ewing on behalf of additional defendant, Eighty Eight,
18 L.P.

19 THE COURT: I should have, when we started here, I
20 should have explained that the protocol I've been following in
21 this courtroom is that when you speak, you can take your masks
22 off as long as those who are next to you are satisfied with
23 that and, of course, if you are as well. We've had no problem
24 with that, but I leave it to you all, but it does make it a
25 little easier for Ms. Feldman to understand what's going on.

1 Okay. Next, sir.

2 MR. BEZAR: Good afternoon, Your Honor. Nadeem
3 Bezdar from Kline & Specter on behalf of the plaintiffs that
4 Ms. Marks has identified.

5 THE COURT: Okay.

6 MS. MARTIN: Good afternoon. Damali Martin,
7 McCormick Priore, on behalf of 4200 Roosevelt Boulevard and
8 4200 Rose Hospitality.

9 MR. MAHONEY: Good afternoon, Your Honor. Harry
10 Mahoney, M-A-H-O-N-E-Y, from Deasey Mahoney, on behalf of
11 American Motor Inns, Inc.

12 MS. PROMISLO: Good afternoon. Jacqueline Promislo,
13 Cozen O'Connor, for the defendant Alpha-Centurian in the A.H.
14 case.

15 MR. SASSO: Good afternoon, Your Honor. Adam Sasso,
16 Stradley Ronon Stevens & Young, here on behalf of defendant
17 Alpha-Centurian in the C.A., B.H. and K.R. cases.

18 MR. SPITZ: Good afternoon, Your Honor. Charles
19 Spitz from Post & Schell and I represent 4200 Rose Hospitality
20 and 4200 Roosevelt Boulevard in the A.H. case.

21 MR. HELLER: Good afternoon, Your Honor. Nathan
22 Heller from DLA Piper on behalf of Wyndham Hotels and Resorts
23 and the other Wyndham entities that Mr. Eliades, my cocounsel,
24 already put on the record.

25 THE COURT: Okay.

1 MS. DESILVESTER: Good afternoon, Your Honor.
2 Catherine DeSilvester of Bennett Bricklin & Saltzburg on
3 behalf of the Ritz Hotel Group in the B.H. and C.A. matter.

4 MS. PRUDENTE: Good afternoon, Your Honor.
5 Katherine Prudente with Thomas, Thomas & Hafer on behalf of
6 Ramara, Inc. in the C.A. and B.H. matter.

7 MS. SANDORA: Good afternoon, Your Honor. Meghan
8 Sandora, Margolis Edelstein, on behalf of Ashoka Investment &
9 Management in the B.H. and C.A. matters.

10 THE COURT: All right, I think I've got everybody.
11 If I've skipped you or you all are hiding behind somebody
12 else, let me know now. Very well, I guess I'd like to hear
13 then from the plaintiffs on the argument of remand and then I
14 suppose, although I don't want anybody to feel frustrated
15 here, if there are some unique arguments on behalf of any
16 particular defendant, then we can have more than one argument,
17 but presumably you all have interacted with each other and so
18 I'm guessing, partially hoping, but guessing that there's
19 going to be one primary argument on behalf of the defendants
20 as opposed to one for each of you that would be duplicative.

21 But, if not, I'm here to serve.

22 Okay. Go ahead.

23 MS. MARKS: Your Honor, plaintiffs M.B., C.A., B.H.
24 and K.R. seek remand of the state civil actions pursuant to
25 equitable remand 28 U.S.C. 1452(b) or, in the alternative,

1 permissive abstention per 28 U.S.C. 1334(c)(1).

2 THE COURT: What would that accomplish if I did the
3 permissive abstention? What would that really do for anybody?

4 MS. MARKS: Your Honor, I think it would result in
5 the same result for equitable remand which is the return of
6 these cases to State Court where they belong.

7 THE COURT: Okay. Go ahead. Sorry.

8 MS. MARKS: Your Honor, my clients are seeking that
9 their cases be remanded to State Court in these cases because
10 this is where their cases were filed. This is where their
11 cases were commenced. This is where their cases have been
12 aggressively litigated for years. And plaintiffs chose to
13 have their cases heard by citizens of Philadelphia County who
14 have a vested interest in the outcome of these cases that
15 involve the sexual exploitation of these young women, who at
16 the time were children, at three Philadelphia hotels. These
17 cases could not have been brought in Federal Court at all
18 without the Roosevelt Defendants', the debtors, filing of
19 bankruptcy, a bankruptcy that was filed after trial had
20 commenced in the M.B. case in an effort to halt that trial and
21 to halt the other litigation as well as engage in forum
22 shopping.

23 THE COURT: Well, that smacks of an unstated, but
24 unmistakable, as well, argument of potential bad faith on the
25 part of the defense. Is that what you're really going -- do

1 you really want to make that allegation?

2 MS. MARKS: I'm not making that allegation, Your
3 Honor. I'm simply saying what we have before us is evidence
4 that what the Roosevelt Defendants were trying to do was to
5 stop the trial and to engage in forum shopping.

6 THE COURT: Well, those sound very, if not bad, then
7 at least on the way to be bad faith from a legal argument
8 standpoint.

9 MS. MARKS: Well, Your Honor, what I say, I don't
10 say lightly, but I don't think we need to get to any
11 accusations about bad faith. What I'm saying is, though, what
12 it is clear happened was that the bankruptcy was filed for
13 purposes of stopping the trial and that's not the first time
14 that the Roosevelt Defendants had tried to stop the trial in
15 the M.B. case. They filed a motion to continue the trial
16 which was denied by Judge Cohen. They also filed a motion to
17 change venue in the form of a motion in limine which was also
18 denied by Judge Cohen.

19 THE COURT: As I understand it, they tried, I guess,
20 twice to postpone or move the trial if I understand the
21 arguments correctly prior to bankruptcy. So maybe on the
22 continuum from wherever to bad faith, there is a stop -- a
23 gamesmanship as a point in all of this behavior. Is that
24 where you are on that point?

25 MS. MARKS: Absolutely, Your Honor.

1 THE COURT: Okay, why is that bad?

2 MS. MARKS: Your Honor, because it's manipulation of
3 the court system to deprive the plaintiffs of their choice of
4 forum and venue which was the Philadelphia Court of Common
5 Pleas.

6 THE COURT: So how have you been prejudiced? How
7 did each plaintiff get prejudiced that you're at least
8 concerned with?

9 MS. MARKS: Your Honor, the plaintiffs have been
10 prejudiced because these cases belong in State Court. Again,
11 this is where they chose to have their case.

12 THE COURT: Have we not been nice to you here?
13 What's the problem?

14 MS. MARKS: No, Your Honor, I certainly don't say
15 that.

16 THE COURT: No, that sounds facetious. I don't mean
17 that, of course, but I'm actually looking for some explanation
18 of what is the prejudice in terms of two forums. I would
19 think that you might be willing to talk about the timing and
20 the investment and getting ready and on the eve of trial, et
21 cetera, and that has a -- that smacks of prejudice as opposed
22 to some ephemeral notion of the difference between "State
23 Court" and "Federal Court."

24 MS. MARKS: Yes, Your Honor, I can respond to that.
25 So with regard to the M.B. case, jury selection was scheduled

1 for June 17th. The trial was first assigned to Judge
2 Cunningham and then reassigned to Judge Stella Tsai. The
3 parties filed approximately 40 motions in limine and
4 responses. Counsel for the parties toured the courtroom where
5 the trial was going to be heard and the trial testimony of
6 additional defendant, Daiquan Davis, was videotaped at the
7 request of the Roosevelt Defendants. When that testimony went
8 poorly, they filed for bankruptcy just hours before jury
9 selection. That case, Your Honor, the M.B. case had been
10 litigated since 2017, so quite some time, and this wasn't a
11 bankruptcy that was just filed on the verge of trial. It was
12 actually filed after trial had started. As I had mentioned,
13 the Roosevelt Defendants' efforts to, you know, halt that
14 litigation didn't just begin with the bankruptcy. There had
15 been a motion to change venue and also a motion to continue
16 trial. They have done everything that they could to deny
17 plaintiffs their choice of forum.

18 As far as the other cases and the investment in the
19 State Court actions, those cases, although they did not have
20 trial dates, they were aggressively litigated for years and
21 were nearing completion. Contrary to the Roosevelt
22 Defendants' assertion that discovery in those cases was
23 somewhat postponed due to the pandemic, that's not accurate.
24 There were nearly 20 depositions taken of desk clerks,
25 managers, former employees who were tracked down who were

1 working for the North American Motor Inns, as that particular
2 hotel had been sold during the pendency of the litigation. So
3 the discovery in those cases, because the discovery as far as
4 the Roosevelt Hotel was complete with regard to the M.B. case,
5 was focusing on the other two hotels. The defendants took my
6 clients' depositions over two days. They were grilled.

7 THE COURT: But all that would be imported into a
8 federal lawsuit, would they not? The idea that it would be
9 removed doesn't mean we reset the clock and everything starts
10 all over.

11 MS. MARKS: Your Honor, but the State Court is
12 intimately familiar with these cases and everything that has
13 transpired --

14 THE COURT: Why do different judges have those
15 cases, have all the cases?

16 MS. MARKS: Your Honor, initially, the M.B. case, I
17 believe, some of the decisions were made by Judge Cohen and
18 Judge Shelley Robins New and then we had the trial assignment.
19 As far as the C.A., B.H. and K.R. matters, initially Judge
20 Anders was presiding over those cases and when he became the
21 supervising judge, the matters were reassigned to Judge
22 Carpenter. So the Philadelphia Court of Common Pleas judges
23 have expended countless hours resolving too many discovery --

24 THE COURT: That conjures up this sort of
25 institutional memory as opposed to what we have here which is

1 the single docket. No, I understand the point you're making,
2 but I think it's hard to say. It's really not an equivalent
3 of saying that one judge has some sort of arguable mastery
4 over the facts and the background of the case as opposed to
5 the institution of the Court of Common Pleas.

6 MS. MARKS: Your Honor, if I could provide some
7 background information about the particular cases and so
8 M.B. -- and that may also bring light to why it's so important
9 that the cases be tried in Philadelphia Court of Common Pleas
10 where, again, the plaintiffs chose to have their cases heard.

11 So M.B. was sold for sex at the Roosevelt Inn when
12 she was just 14 years old. Plaintiffs C.A. and B.H. were also
13 sold for sex at the Roosevelt Inn as well as the Days Inn on
14 Roosevelt Boulevard and the North American Motor Inns, both
15 also Philadelphia hotels. The North American Motor Inns is
16 located -- was located on City Line Avenue and it was since
17 sold and now I believe not currently operating. The Days Inn
18 on Roosevelt Boulevard is part of the Wyndham brand of hotels.
19 The Wyndham defendants make up the largest brand of hotel
20 chains in the world. So we're dealing with all three hotels
21 that are Philadelphia well-known hotels where sex trafficking
22 has taken place. So as far as remander or abstention, which
23 is why we're here before Your Honor, the question that we have
24 is where these cases should be tried. So recently, Judge
25 Chan, who's presiding over the Bankruptcy Court matters, made

1 it clear that the automatic stay does not apply to the list of
2 other defendants not related to the Roosevelt Defendants. So
3 those cases can be -- can move forward. As I will explain to
4 Your Honor, the criteria for remand or abstention all favor
5 remand and the courts have broad discretion in remanding the
6 cases. And most courts have been guided by a seven-factor
7 test and I believe here that the parties agree that the seven
8 factor test which was set forth -- it's the Dieterly v. Boy
9 Scouts case that I'll refer to as the Boy Scouts case -- is
10 the criteria for remand, but that where the parties differ is
11 the applications of the facts to that criteria.

12 So, Your Honor, with respect to the criteria, one of
13 the first factors is the effect, whether remand will have the
14 effect on the efficient administration of the bankruptcy
15 cases. And in these cases, remand will have little or no
16 impact on the administration of the bankruptcy case. The
17 Bankruptcy Court cannot decide these personal injury cases.
18 They have to be heard in a court other than bankruptcy.
19 There's absolutely no efficiency to having these cases be
20 heard in the Federal District Court while there's a bankruptcy
21 court matter because the Bankruptcy Court can't simply hear
22 it.

23 The next criteria is the extent to which issues of
24 state law predominate. All of plaintiffs' claims arise under
25 Pennsylvania common law. As I mentioned, this case could not

1 have been brought in Federal Court. There's no federal
2 question of law and there's no diversity jurisdiction.

3 THE COURT: Is there anything unsettled about the
4 state law that you say is controlling here?

5 MS. MARKS: Well, Your Honor, certainly this is a
6 new area of the law in that although plaintiffs' claims are
7 personal injury claims, these are not run-of-the-mill motor
8 vehicle cases or slip and falls, but I certainly don't mean to
9 diminish the importance of those types of claims as they can
10 be quite complex.

11 THE COURT: I should say.

12 MS. MARKS: These cases involve some of the first
13 application of common law negligence theories to holding
14 landowners and business operators accountable for the sexual
15 exploitation and the selling of girls for sex by third
16 parties.

17 So the Roosevelt Defendants have stated in filing
18 that these cases --

19 THE COURT: How is that different? I have seen a
20 number of cases where the hotel sublets out a portion to like
21 a spa and then there's some alleged personal tort by the
22 masseuse or the masseur and then the offended party sues not
23 only the spa, but also the hotel landlord. Is that
24 essentially -- I mean that theory seems to me to be
25 reminiscent of what you're saying.

1 MS. MARKS: It is reminiscent, Your Honor, but it's
2 different in that's these are sex trafficking cases.

3 THE COURT: Well, I understand that part. Okay.
4 All right.

5 MS. MARKS: Your Honor, I anticipate that the
6 Roosevelt Defendants will argue that these are not complex
7 matters that certainly can be tried in Federal Court, but in
8 State Court filings --

9 THE COURT: I'm sure there's some unintended slam
10 there somewhere, but go ahead.

11 MS. MARKS: Well, the Roosevelt Defendants have
12 stated --

13 THE COURT: Even a federal judge can figure their
14 way through that. I get it.

15 MS. MARKS: No, Your Honor, I did not mean that, but
16 that, you know, the Roosevelt Defendants have argued in State
17 Court that these -- have agreed that these are complex issues,
18 these are complex cases. In their motions to continue trial,
19 they stated that -- in reference to the complexity of the
20 litigation and the enormity of the task of finding replacement
21 counsel. So their lead counsel, James Quinlan, who was a
22 partner of Blank Rome, withdrew his appearance and actually I
23 believe stopped working at Blank Rome just prior to the trial
24 so they were requesting additional time. In an affidavit
25 attached to that motion, Mr. Quinlan verified that, I'll

1 quote, "The file is one of the largest in size that I have
2 been challenged to handle during my 15 year-plus legal
3 career."

4 So, Your Honor, this is -- these are complex cases,
5 and, as I mentioned, much time and effort and many resources
6 that the Philadelphia Court of Common Pleas has invested in
7 these cases over the years.

8 With respect to another criteria which is comity,
9 Your Honor, in the Boy Scouts case that I referenced earlier,
10 the District Court deferred to the State Court in that case,
11 and that case, it had been pending in State Court for
12 approximately six months prior to its removal with the Court
13 ruling on -- in the State Court ruling on several motions.
14 The District Court in the Boy Scout case determined that the
15 Common Pleas Court was more familiar with the numerous factual
16 disputes. Here we have cases that have been pending for
17 years, one particular case where trial had commenced, and
18 certainly these cases have been -- are much further along than
19 the Boy Scout case was which was remanded back.

20 The next criteria, Your Honor, is the degree of
21 relatedness or remoteness of the proceedings in the main
22 bankruptcy case and there may be some connection to the
23 bankruptcy case, but the Bankruptcy Court, Your Honor, as I
24 mentioned, can't hear these cases. So what we're left with is
25 where the cases should be tried.

1 The next criteria is the existence of a right to a
2 jury trial.

3 THE COURT: I have to interrupt just a second.

4 MS. MARKS: Sure.

5 THE COURT: The natural breakpoint here for this
6 jury would be when you are concluded with your preliminary
7 argument. Would you agree that sounds like a natural breaking
8 point?

9 MS. MARKS: Yes, Your Honor.

10 THE COURT: When might that be?

11 MS. MARKS: Your Honor, I probably have a few more
12 minutes, but I understand.

13 THE COURT: No, no, no, I'm unhappy enough at having
14 to interrupt you and hold you all up, but I really cannot let
15 this jury sit in this other case and wait for the full panoply
16 of all the arguments. I just don't want to interrupt you any
17 more that I already have.

18 MS. MARKS: You know, Your Honor, I wouldn't mind if
19 you need to conclude this matter. I understand.

20 THE COURT: Okay. Well, my usual routine is after
21 you hear from your opponents, you get to pop back up and say
22 anything more you want to, all right? But what I would like
23 to know is will there be other plaintiffs' counsel arguing
24 differences on behalf of other plaintiffs?

25 MR. HEINOLD: Good afternoon, Your Honor. We

1 represent plaintiff A.H. We're the only other plaintiff
2 counsel. As you can hear, Ms. Marks is thoroughly analyzing
3 for the Court so unless Your Honor has specific questions to
4 us, we'll rely on what Ms. Marks says.

5 THE COURT: That's great. So how about if I just
6 stick with my usual protocol. After I hear from the defense
7 and you hear my questions of them, then you'll have a chance
8 to argue some more. Will that be okay?

9 MS. MARKS: Yes, Your Honor.

10 THE COURT: Thank you very much.

11 Okay, Mr. Coyle, what do you need in terms of
12 timing?

13 THE DEPUTY CLERK: We're ready.

14 THE COURT: They're ready to come in?

15 THE DEPUTY CLERK: They're ready. Counsel is in the
16 witness room down here.

17 THE COURT: You can tell them to come on in here.

18 And the jury is in here? (Indicating)

19 THE DEPUTY CLERK: Yes.

20 THE COURT: And I'll just ask you, folks, if you
21 wouldn't mind vacating your spots a bit.

22 Just so you all have a point of context, this is a
23 ten-count criminal case involving Title 15 and Title 18
24 securities fraud.

25 (After recess:)

1 THE COURT: So there you go. That's the other side
2 of the fence. Do you want to come back on up? The excitement
3 of that case was one of the codefendants was a former Eagles
4 football player so that's what was interesting about that
5 case.

6 Which of the defendants would like to speak first?

7 MR. MARION: Your Honor, Charles Marion on behalf of
8 the debtors and related debtor parties.

9 THE COURT: Got it.

10 MR. MARION: Do you want me to use the podium or
11 stay here?

12 THE COURT: Whatever works best for you.

13 MR. MARION: If it's okay, I'm going to use the
14 podium.

15 THE COURT: You might then want to turn it.

16 MR. MARION: It's heavier than I thought.

17 THE COURT: That is, actually.

18 MR. MARION: Good afternoon, Your Honor. Charles
19 Marion, Blank Rome, on behalf of the debtor defendants, the
20 Roosevelt Inn, LLC and Roosevelt Motor Inn, Inc., and the
21 nondebtor-related parties which are UFVS Management Company,
22 LLC and Yagna Patel. And, Your Honor, I may refer to those
23 four defendants as the Roosevelt Defendants. They're all
24 affiliated with each other. Mr. Patel is the manager of the
25 hotel and they're all insureds or additional insureds under

1 the policies that may or may not provide coverage here.

2 Your Honor, the cases we removed to this Court are
3 absolutely related to the debtor's bankruptcy proceeding and
4 estate. In our brief, we gave the definition that an action
5 is related to a bankruptcy case where its outcome could
6 conceivably have any effect on the estate being administered
7 in bankruptcy.

8 THE COURT: Well, under your definition of what's
9 related, what would not be related?

10 MR. MARION: I suppose, Your Honor, if there would
11 be a claim that may not have any impact on the debtor's
12 assets. I don't know what that may be.

13 THE COURT: What kind of claim would that be?

14 MR. MARION: That's a good question, Your Honor.

15 THE COURT: The reason I ask is, you know,
16 related -- related can be either a loose or a tight reign.

17 MR. MARION: Yes.

18 THE COURT: And somewhere there should be a
19 limitation on what is under the umbrella of "related."

20 MR. MARION: Yeah, and I guess to flesh it out a
21 little bit more, Your Honor, the cases talk about if the
22 outcome of these cases will alter the debtor's rights,
23 liabilities, options, will impact on the handling and
24 administration of the bankrupt estate, then they're related.
25 And here we would argue they indisputably are related. The

1 plaintiffs obviously seek substantial amounts in damages in
2 the five pending cases. If they get a verdict in any one of
3 those five cases, it would probably greatly exceed the value
4 of the assets our client has which, Your Honor, really are
5 just the hotel. It's a mom and pop independent hotel on
6 Roosevelt Boulevard in Northeast Philadelphia. A negligible
7 amount of cash on hand and their insurance policies which, as
8 Your Honor knows, coverage has been denied, there's litigation
9 pending in this court before the Honorable Darnell Jones. It
10 could very well be that our clients don't have any insurance
11 coverage, but in the M.B. case, primary excess combined to 25
12 million policy limits, but, Your Honor, there's also
13 crossclaims in these cases with Alpha-Centurion, the security
14 company the hotel hired, where if Alpha were to get a
15 crossclaim verdict against my client, that would also impact
16 the assets of the estate. So we would contend that they're
17 clearly-related actions.

18 And, Your Honor, I wanted to mention the notice we
19 filed last Friday. I don't know if Your Honor saw it. There
20 were some orders recently ordered by Judge Chan in the
21 bankruptcy case, one of which granted our clients' motion for
22 basically a global mediation. All the parties and all their
23 insurers in these cases have agreed to participate in that
24 mediation. Judge Frank has been appointed as the mediator.
25 He's conducting an initial conference with everyone next

1 Friday, October 8th. There was also an order entered which we
2 submitted which has a bar date for claims, for tort
3 claims under --

4 THE COURT: November?

5 MR. MARION: Yes, November 30th, Your Honor. So we
6 anticipate the mediation, while Judge Frank is already at work
7 in trying to get the parties together for some preliminary
8 initial conferences, the actual probably multi-day mediation
9 will likely take place in December or January and Judge
10 Chan --

11 THE COURT: But she did not lift the stay, right?

12 MR. MARION: Correct, Your Honor, she hasn't ruled
13 on that yet. She put that off. She actually expressed a --
14 if I can -- I wasn't at the bankruptcy hearing, but as I
15 understand it as was reported to me, she strongly favors
16 having this mediation and hopes that it might, you know,
17 achieve some kind of resolution here.

18 THE COURT: Well, that would be unusual for a judge
19 to say.

20 MR. MARION: But, Your Honor, keeping the cases in
21 this court would certainly, in our view, provide the most
22 efficient way to administer and coordinate these cases. Your
23 Honor's obviously already consolidated the cases for
24 administrative purposes. That could not have happened in the
25 State Court with five cases at different stages. The removal

1 we filed, Your Honor, was proper, it was timely, and it was in
2 good faith. It was not done lightly -- I'm sorry, the
3 bankruptcy, Your Honor. The removal was timely and properly
4 filed in good faith, but so was the bankruptcy proceeding. It
5 was not done for purposes of forum shopping. It was, rather,
6 for our clients to find the most orderly way to coordinate and
7 resolve all of these pending claims to allow them to
8 reorganize and go about continuing to operate its hotel.

9 Contrary to what Ms. Marks has argued, the trial in the M.B.
10 case had not yet commenced. As counsel said, jury selection
11 was scheduled for the next day, we don't dispute that, but the
12 trial had not certainly started. There was one trial
13 deposition taken which the parties had started talking about
14 back in March of this year. The judge had only been assigned
15 one day before the bankruptcy was filed and, Your Honor, five
16 days before we filed for bankruptcy, at the insurance
17 carrier's prompting, I asked plaintiffs' counsel for a written
18 settlement demand and it's in our papers, Your Honor. To that
19 point, they had only demanded policy limits, \$25 million, and
20 this was the Friday night before we filed for bankruptcy. On
21 June 11, plaintiffs' counsel sent a letter saying that they
22 would lower their settlement demand to \$24 million which, Your
23 Honor, as I said, the value of the hotel we think is only
24 probably worth about three and a half million or so. We don't
25 know if there's any insurance coverage here so that was

1 certainly one of the factors which made our clients consider
2 and ultimately decided to file for bankruptcy protection. Ms.
3 Marks mentioned motions we filed which she claims were filed
4 to try to avoid trial. That was not the case. As she herself
5 mentioned, our colleague, Jim Quinlan, our partner, who had
6 been -- literally attended every deposition in these cases and
7 been at every event decided to go in-house for a good
8 opportunity shortly before trial. He actually called
9 plaintiffs' counsel and plaintiffs' counsel actually suggested
10 to us that we might file a motion to continue the trial and
11 that they would only file a soft opposition. So it's a little
12 disingenuous for them to argue that we filed that to avoid
13 trial. We did file it, however, and we also did file a motion
14 to transfer venue because, Your Honor, when the plaintiffs
15 filed all of these cases, they went to the media, which is
16 their right, and there was a lot of negative publicity about
17 our clients' hotel. We -- it was a very extensive motion to
18 transfer venue. We had very real and legitimate concerns
19 about the jury being poisoned by this negative media
20 publicity. We attached multiple articles from different news
21 sources which really casted a negative light on our clients so
22 that was a very legitimate filing.

23 Your Honor, the Dieterly case that plaintiff relies
24 on, while we do agree those are the factors that Your Honor
25 can consider in deciding whether to remand or abstain, that

1 was a very different situation. The Boy Scouts of America, a
2 huge organization, had a lot more assets than our client, a
3 mom and pop hotel. There were various cases removed from
4 different jurisdictions. The Dieterly case was from
5 Philadelphia Court of Common Pleas, but the bankruptcy was
6 filed in the District of Delaware so the comity issue was a
7 bit different there and even if you do apply the seven factors
8 from Dieterly as Ms. Marks went through, we contend that those
9 factors weigh in favor of your not remanding the case.

10 THE COURT: Well, run through them and explain that
11 to me. I think it seems to me that it's hard to tote up those
12 factors and say they argue in favor of the removal. So why
13 don't you explain to me why --

14 MR. MARION: Sure, Your Honor.

15 THE COURT: -- my quick toting them up on my fingers
16 will --

17 MR. MARION: Okay, I'll be happy to do that. So the
18 first is the effect on the efficient administration of the
19 bankruptcy estate and we believe this factor weighs heavily in
20 favor of not remanding because it would be most efficient and
21 effective when it comes to the administration of the
22 bankruptcy estate in our view to keep these related cases --

23 THE COURT: They tell me they don't plan to enforce
24 a collective to get a judgment except in the bankruptcy so
25 they're not going to interfere with the bankruptcy.

1 MR. MARION: That's not exactly true -- well, they
2 say that, Your Honor, but a judgment would change their status
3 to secured creditors. It would have significant impact on the
4 bankruptcy estate. So that is not accurate what they've said
5 in that respect, but certainly the bankruptcy proceedings
6 being administered in this court, our clients' bankruptcy
7 counsel, who was on one of the calls with Your Honor and
8 unfortunately could not be here today, had another hearing,
9 feels very strongly that it is important to keep these cases
10 in this court to have the most efficient and effective way of
11 administering them all. And as Your Honor --

12 THE COURT: Why would not the speedier resolution
13 actually facilitate the bankruptcy proceedings particularly
14 given the fact that -- well, you've got the question of the
15 insurance and so it's really unknowable until that's resolved
16 what anybody would be looking to to collect from, right? I
17 mean I'm just not quite seeing why Federal Court makes it a
18 better forum from the administration of the bankruptcy than
19 State Court because in either one, you know, let's say I kept
20 the cases and I said, Okay, you guys are ready to try the
21 case, let's go at it tomorrow or whatever, you know, two
22 weeks. You still end up with a verdict one way or another and
23 how does that -- so why would being here be better than being
24 done the street?

25 MR. MARION: Well --

1 THE COURT: The administration of the bankruptcy
2 estate.

3 MR. MARION: I think, Your Honor, that obviously
4 Congress provided for removal in this kind of bankruptcy
5 situation and the Bankruptcy Court does take jurisdiction over
6 the claims, but cannot liquidate those tort claims so they
7 would have to be tried --

8 THE COURT: Right.

9 MR. MARION: -- and we believe it would be easier to
10 have them all tried in this court, the same court in which the
11 bankruptcy is pending.

12 THE COURT: But why?

13 MR. MARION: I mean I think, Your Honor, and not to
14 say anything bad about the State Court, but the other four
15 cases are not nearly -- I mean contrary to what Ms. Marks
16 said, I don't believe any of those are close to trial and, you
17 know, in some ways, the cases may get to trial more quickly in
18 Federal Court than the State Court. And I think that to have
19 them all in one forum, if I may, Your Honor --

20 THE COURT: Well, I'm just trying to figure out why.
21 I mean I understand a little bit of what you're saying, but
22 not in terms of saying that weighs in favor -- you know, why
23 this particular issue weighs in favor of the remand -- the
24 removal, I suppose, of the remand. I guess it gets a little
25 complicated as to the nondebtors. And would a remand harm the

1 estate administration if there is some issue about allocating
2 liability among defendants, I suppose, but I don't quite know
3 why -- I can't get my hands around the concept of why that
4 makes the removal better for the administration of the
5 bankruptcy estate than the remand.

6 MR. MARION: Well, I will say, Your Honor, the
7 Bankruptcy Code 28 U.S.C. § 157(b)(5), which we cited in our
8 opposition brief, says that the manifest purpose of that
9 section which we relied on is to centralize administration of
10 the estate and to eliminate the multiplicity of forums for the
11 adjudication of parts of the bankruptcy case. So, you know,
12 in our view, it would be better. That factor would weigh in
13 favor of keeping the cases here because they would all be in
14 one forum.

15 THE COURT: Well, let's pose the following just to
16 test the theory.

17 Let's say there had not been a consolidation. So
18 let's say your worst nightmare is you get ten of us here at
19 6th & Market which is no different than having 10 down the
20 street, right, 10 judges?

21 MR. MARION: I'm not so sure, Your Honor, because I
22 think in Federal Court there's more of an opportunity to have
23 them deal with related cases and, you know --

24 THE COURT: We don't have to.

25 MR. MARION: You don't have to, no, that's true.

1 That's true.

2 THE COURT: That's what I'm saying. So imagine the
3 nightmare and you've got ten of us to deal with.

4 MR. MARION: I don't think it's a nightmare, Your
5 Honor. I think that would be fine.

6 THE COURT: Okay, so you get that mixed in. Do you
7 see what I'm saying? I'm not quite sure what is it about the
8 removal that makes it better for the bankruptcy
9 administration.

10 MR. MARION: Well, I will say that Judge Chan has
11 ordered this mediation and she actually has, even despite the
12 pendency of the insurance coverage litigation which is
13 ongoing, has gotten all of the insurers and all the parties to
14 participate in that.

15 THE COURT: Is that mediation with Judge Frank
16 coordinated --

17 MR. MARION: Yes -- I'm sorry.

18 THE COURT: -- with whatever Judge Jones may or may
19 not be doing? Is there any coordination at all?

20 MR. MARION: Not that I'm aware of. Yeah, I don't
21 believe so.

22 THE COURT: Have you guys told Judge Jones about it?

23 MS. BYERS: Your Honor, we don't represent the
24 debtors in the Judge Jones' action. I'm not certain if the
25 debtor counsel has notified Judge Jones of the mediation or

1 Judge Frank's participation.

2 THE COURT: Well, if all the insurers are going to
3 see Judge Frank -- or former retired, whatever he is, former
4 Judge Frank, I would simply recommend that it makes good sense
5 to bring Judge Jones up to speed on that. He might find that
6 to be a useful piece of information.

7 MR. MARION: I agree, Your Honor, and we'll advise
8 insurance counsel for our client. It may have happened. I
9 just don't know.

10 THE COURT: Let me put it this way. If I were Judge
11 Jones and I found out after the fact, I would be dismayed.

12 MR. MARION: Okay. I'll make sure that's either
13 happened or will happen.

14 THE COURT: Okay, why don't you move to the
15 predominance of whether it's state law or not.

16 MR. MARION: Well, as Your Honor, I believe, alluded
17 to, the issue or the claims, rather, in these cases are rather
18 straightforward. They're negligence and negligent infliction
19 of emotional distress. While trafficking cases may be a
20 relatively new area of the law, we're really talking, Your
21 Honor, about the well-settled Pennsylvania law and the duty of
22 an innkeeper to its guests.

23 THE COURT: Why does that not say that state law
24 predominates, in fact, it is the case and so it belongs in
25 State Court.

1 MR. MARION: Your Honor, I think that one may be a
2 wash. I think Your Honor could certainly apply these state
3 law principles. We're not moving these cases to another
4 jurisdiction outside of Pennsylvania. It's still the same
5 application of Pennsylvania law. So I would argue that that's
6 kind of a neutral factor here. And when it comes to comity,
7 which is one of the next factors, you know, as I said in the
8 Dieterly case, you were looking at a bankruptcy filed -- the
9 Dieterly case was pending in the Philadelphia Court of Common
10 Pleas as these cases were, but the bankruptcy was filed in
11 Delaware District Court and there were some issues relating
12 to, you know, across state or across different forums. Those
13 concerns aren't present here. I mean we're just talking about
14 cases that were either in Philadelphia State Court or
15 Philadelphia Federal Court so I don't think we have those
16 concerns in this case.

17 The degree or relatedness or remoteness of the
18 proceedings of the main bankruptcy case, this, Your Honor, is
19 one of the key differences from the Dieterly case. In that
20 case, the Court found that remand would have limited effect
21 upon the administration of the bankruptcy case, but here we
22 really contend that it would hinder the efficient
23 administration because you have these tort claims before
24 different judges at different stages and they would all
25 conceivably, you know, if the plaintiffs win in any of these

1 cases have a very large impact on the bankruptcy case and the
2 bankruptcy estate. We cited law in our brief, Your Honor,
3 that where the outcome of the litigation could have a profound
4 effect on the assets in the bankruptcy estate, this factor
5 counsels strongly against remand.

6 The next one, Your Honor, is the existence of a
7 right to a jury trial which clearly is precedent in either
8 court.

9 And prejudice -- the last is the prejudice to being
10 voluntarily removed parties and there's really none here. The
11 other defendants in our cases have either consented to removal
12 or have removed themselves. As Your Honor has seen, they
13 favor removal.

14 And just on abstention, Your Honor, that really --
15 the law says it's the exception, not the rule, and there's,
16 you know, policy of -- some courts have held that abstention
17 would undercut the purpose of Section 157(b) of the Bankruptcy
18 Code and the process we follow to remove the case to this
19 Court.

20 So based on all these reasons, Your Honor, we
21 believe the cases should remain and the motion should be
22 denied.

23 THE COURT: Okay.

24 MR. MARION: Thank you.

25 THE COURT: Actually, why don't you take another

1 minute or two to address again my concern that something just
2 doesn't feel right about the timing here.

3 MR. MARION: About the filing of the bankruptcy?

4 THE COURT: Yes.

5 MR. MARION: Well, Your Honor, I can tell you that
6 our clients deliberated for months, if not years, about filing
7 for bankruptcy and when we got closer to this trial and we did
8 engage in a court-ordered settlement conference in the Court
9 of Common Pleas and I think since the mediation in December
10 of 2019 or thereabouts, the plaintiffs would not come down
11 from policy limits 25 million and, again, Your Honor this is
12 one case out of five pending cases. So it was quite clear --

13 THE COURT: All right, I understand it's just a
14 number and maybe that shocks somebody into saying, Well, let's
15 get off the dime here, you know, we've been dithering forever
16 about bankruptcy or no bankruptcy. Yikes, they seem to be
17 serious, yikes, we're starting tomorrow, yikes, where is that
18 Bankruptcy Court filing, but it seems to me that Roosevelt Inn
19 had no real estate that I can speak of or at least no mortgage
20 shown.

21 MR. MARION: Right.

22 THE COURT: There are no liens that were there.
23 There's not much of an unsecured debt from what I can see.

24 So other than the lawsuits, what prompted the
25 bankruptcy? It's the lawsuits.

1 MR. MARION: Well, the lawsuits and the denial of
2 insurance coverage, the exorbitant settlement demands. I mean
3 COVID had an impact on the hotel. The owners had told us, you
4 know, they were operating still but not -- barely staying
5 above water from what we were told. So I think all those
6 factors combined and, you know, the settlement demand just
7 before trial was not an insignificant factor. It was, you
8 know -- it just really caused our clients to take that step.

9 THE COURT: Yes, but why should I not look at the
10 use of the Bankruptcy Code here as an effort to use the code
11 as a shield from liability? It's virtually a sword, by the
12 way, but let me just stick with the shield analogy. It's a
13 shield from liability on the cases.

14 MR. MARION: Well, it's a stay. I mean, it's an
15 automatic stay of the cases so the client can hopefully
16 reorganize. It was a Chapter 11 filing, not a Chapter 7.
17 They're not looking to liquidate, they're looking to
18 reorganize and continue in business and, you know, frankly,
19 Your Honor, in the bankruptcy proceeding, our clients are
20 pursuing a path where they want to take what assets they do
21 have or may have in insurance and create some sort of pool or
22 trust for the legitimate claimants. You know, they were
23 looking at one case going to trial very soon where the demand
24 was so high and the risk of an adverse verdict was high. They
25 weren't looking to avoid trial, but they were looking at, you

1 know, this could certainly, you know, liquidate or, you know,
2 they would be out of business in any event, I guess, so they
3 were looking for an opportunity to try to reorganize and
4 remain in business and, you know, it's something they're
5 entitled to do under the Bankruptcy Code. The timing perhaps
6 wasn't ideal, I won't disagree too strongly with that, Your
7 Honor. We were -- Ms. Byers and I were gearing up for trial
8 like other counsel. Believe me, we were working around the
9 clock. There was a separate lawyer who's handled the
10 bankruptcy, but, you know, it was a good-faith filing. I mean
11 it was not done for forum shopping or delay. It was really
12 done so they could try to reorganize and continue in business.

13 THE COURT: Okay.

14 MR. MARION: Thank you.

15 THE COURT: Do any of the other defendants want to
16 argue on the remand issue?

17 MR. ELIADES: I would, Your Honor, on behalf of the
18 Wyndham Defendants.

19 THE COURT: Sure. Come on up.

20 MR. ELIADES: My glasses were all fogged up, Judge.

21 THE COURT: I know. Been there, done that.

22 MR. ELIADES: Your Honor, certain of the Wyndham
23 entities are defendants in lawsuits filed on behalf of C.A.,
24 B.H., K.R. and A.H. The Wyndham entities are not defendants
25 in the M.B. case. So, accordingly, we'd only be arguing the

1 remand motions with respect to four cases and I note it's not
2 with respect to M.B.

3 Your Honor, the plaintiffs in those four cases chose
4 to bring a single lawsuit seeking damages from multiple
5 defendants for trafficking alleged at several hotels. The
6 defendants in each of those cases have asserted or are
7 entitled to assert various crossclaims, indemnification claims
8 or contribution claims and any damages which may be awarded to
9 a plaintiff in one of the four cases that we're speaking about
10 would need to be allocated amongst the various defendants who
11 are found to have liability.

12 THE COURT: That was what I was talking to counsel
13 about, that that might be where there's some administration of
14 the estate and something about the bankruptcy forum that might
15 at least have some relationship to what's happened here. I
16 get it.

17 MR. ELIADES: Exactly, Judge, and we're talking
18 about an administrative nightmare to use the Court's phrase
19 earlier.

20 THE COURT: Well, no, that nightmare was the ten
21 separate judges.

22 MR. ELIADES: Yeah. Well, you could see a situation
23 where, you know, if the Court were to uncouple these cases and
24 have Federal Court jurisdiction retained over the claims
25 against the debtors, but have the matters proceed against the

1 nondebtor parties in the State Court, you would have, you
2 know, all sorts of administrative challenges from dealing with
3 crossclaims, indemnification claims to potentially, you know,
4 the impact of adverse rulings in the State Court affecting the
5 rights of the debtors. So -- but I'll get to that in a
6 second.

7 So just to recap the overview, Judge, two of the
8 defendants in the four actions that affect the Wyndham
9 entities exercised their right to file a bankruptcy
10 proceeding. The debtors then exercised their statutory right
11 under 28 U.S.C. 1452 and separately removed only the claims by
12 and against the debtors and the parties related to the debtors
13 in C.A., B.H., K.R. and A.H. They also removed the claims
14 related to the debtor parties to the M.B. case from the Court
15 of Common Pleas to this Court. The remaining codefendants in
16 those four actions exercised their statutory right and filed
17 separate timely notices of removal removing only the claims by
18 and against the nondebtor parties in the four litigations. So
19 at this point, C.A., B.H., K.R. and A.H. have been removed and
20 are pending before Your Honor and the parties and the claims
21 in each of those litigations have been rejoined in this court
22 in exactly the same posture that the plaintiffs chose to
23 commence those cases in the State Court.

24 THE COURT: Except they didn't choose to come here
25 and why -- I mean, is not -- well, to ask the question

1 actually is to answer the question. Is not the filing of one
2 of your codefendants, one of the defendants, just the
3 opportunity for opportunism for the rest of you because you
4 couldn't be here in the first place?

5 MR. ELIADES: It is an opportunity, Judge. It's a
6 statutory opportunity.

7 THE COURT: Okay.

8 MR. ELIADES: And we have to get over it. It's an
9 opportunity that Congress gave to these nondebtor
10 codefendants, but they can only exercise and take advantage of
11 that opportunity if they can establish that the removal was
12 proper which I'll address in a second.

13 THE COURT: Go ahead.

14 MR. ELIADES: So none of the removing parties have
15 taken the position that the plaintiffs are not entitled at the
16 appropriate time to a jury trial.

17 In fact, 28 U.S.C. 157(b)(5) provides a mechanism
18 for District Courts to conduct trials in personal injury
19 actions in exactly this situation.

20 So the plaintiffs in the C.A., B.H., and K.R.
21 litigations filed separate motions to deem the removals by the
22 nondebtor parties void, to remand those cases back to State
23 Court, and we're asking this Court to exercise permissive
24 abstention.

25 The plaintiff in the A.H. matter filed an identical

1 motion albeit arguably out of time. So the Wyndham Defendants
2 and most, if not all --

3 THE COURT: Is that going to be your argument?
4 Who's going to be the one to --

5 MR. ELIADES: I'm not going to argue that, Judge. I
6 believe --

7 THE COURT: Okay, is somebody going to try to argue
8 that?

9 MR. ELIADES: I believe counsel from Saul Ewing is
10 going to argue that.

11 THE COURT: Not that I want to overemphasize the
12 word try, but I have.

13 MR. ELIADES: Maybe counsel will not argue that.

14 THE COURT: Just saying.

15 MR. ELIADES: So the Wyndham defendants and most, if
16 not all, of the nondebtor removing parties filed oppositions
17 to the remand motions in those four cases, and as Your Honor
18 is well aware, when there's an objection to a remand, the
19 party that is invoking Federal Court jurisdiction has the
20 initial burden of demonstrating that the removal to the
21 District Court is proper by a preponderance of the evidence.
22 So the joint removal by the Wyndham defendants and the
23 nondebtor parties were made pursuant to 28 U.S.C. §§ 1334 and
24 1452(a). So 1452(a) is the gateway to 1334 and that provides
25 that a party may remove any claim or cause of action to the

1 District Court where the civil action's pending if the
2 District Court has jurisdiction under 1334. And 1334(b) says
3 that the District Court shall have original, but not
4 exclusive, jurisdiction of all civil proceedings arising under
5 Title 11 bankruptcy or arising in or related to bankruptcy
6 cases. And Your Honor correctly, you know, pointed out the
7 very, very broad related to jurisdiction that has come out in
8 case law. The PriceWaterhouse case, which we have in our
9 brief, contains a pronouncement from the Third Circuit that
10 related to a jurisdiction is the broadest potential path to
11 bankruptcy jurisdictions and the Pacor case, another Third
12 Circuit decision --

13 THE COURT: It is at most a translucent concept in
14 this case. At most.

15 MR. ELIADES: And as counsel for the debtor cited
16 earlier, the Pacor case, you know, provides that related to
17 jurisdiction -- or actually it's related to a bankruptcy case
18 if its outcome could conceivably have any effect on the estate
19 being administered in bankruptcy and we cited and I know the
20 Eighty Eight L.P. defendant also cited a number of cases where
21 circuit courts have found that related to jurisdiction is
22 extremely broad and specifically was applied in connection
23 with contribution, indemnification and crossclaims in personal
24 injury cases.

25 Now, as debtor's counsel also cited, the conceivable

1 effect test is satisfied.

2 THE COURT: How can anybody with a straight face
3 even call it a test? I mean I don't mean to be too
4 argumentative about it, but that to me, that's almost as hard
5 to get ahold of as related to is.

6 MR. ELIADES: I think we can fairly characterize it
7 as a low hurdle, Judge.

8 THE COURT: All right. I don't want to beat that
9 horse too much, but it does -- as somebody who spends their
10 entire life it seems like dealing with all the tests that
11 everybody comes up with, that one is, you know, hard to resist
12 to talk about.

13 MR. ELIADES: So let me just say according to the
14 Third Circuit, an action satisfies or clears that low hurdle
15 if the outcome could alter the debtor's rights, liabilities,
16 options or freedom of action either positively or negative in
17 any way which impacts upon the handling and administration of
18 the bankruptcy estate. And as I noted earlier, the outcome of
19 the nondebtor party's potential crossclaims, contribution
20 claims, indemnification claims inarguably could alter the
21 debtor's liabilities. In addition, if there is a
22 determination of liability against defendants in any of these
23 actions, that liability would have to be specifically
24 allocated among the debtor and nondebtor defendants who are
25 found liable by the trier of fact, and that clearly would

1 affect the debtor's rights, liabilities, and options. And,
2 you know, also to the extent that there is a bifurcation of
3 these claims, discovery rulings by one court or in one court
4 apart from the potential for inconsistent results could be
5 binding upon and affect the debtor's rights, liabilities and
6 options and also significantly affect the administration of
7 debtor's estates.

8 THE COURT: I will say that it is absolutely
9 undeniable that there's a greater facility in a single
10 district to consolidate matters relatively easily and we do
11 that all the time and it's a little more cumbersome to do if
12 you've got, you know, ten different State Court cases.
13 There's no getting around that for anybody to argue. It is
14 easier to do. We do do it frequently. It's not necessarily
15 going to happen, but one of the arguments made for it always
16 is the spookiness of inconsistent verdicts. I get that. So I
17 think that is just a fact that's true, but I'm not sure of
18 much more, you know, beyond that. I actually had thought of a
19 question for plaintiffs' counsel on the point of why does the
20 bankruptcy -- why does the difference in terms of the
21 debtor's facility to defend itself become sort of important
22 once the bankruptcy is filed, but that's not going to be a
23 question for you because you're not even representing the
24 debtor.

25 MR. ELIADES: Thank goodness, Judge.

1 THE COURT: There you go.

2 MR. ELIADES: So, Your Honor, I don't think there's
3 any serious question that the claims related to the non --
4 that the claims against and of the nondebtor parties in at
5 least the four litigations that we're concerned with are
6 related to.

7 THE COURT: Do you find your clients more at risk
8 somehow if the case is against you proceeding in State Court
9 apace?

10 MR. ELIADES: I don't know if I'm the right person
11 to answer that, Judge, because I'm not involved in the defense
12 of the substantive cases. I can't imagine that my client
13 would authorize me to say yes in that --

14 THE COURT: And yet if you say no, then that has an
15 implication to the issue at hand.

16 MR. ELIADES: Your Honor, I think there's no serious
17 question that the Wyndham and the nondebtor cases are related
18 to and that the cases were properly removed. So once you
19 clear that admittedly low hurdle, the burden shifts to the
20 parties seeking remand or permissive abstention to establish
21 that by a preponderance of the evidence. And the Wyndham
22 Defendants submit that none of the plaintiffs have satisfied
23 their burden with respect to the four cases.

24 The plaintiffs in C.A., B.H., K.R. and A.H. present
25 two identical arguments regarding the joint removals of the

1 Wyndham parties and other nondebtor defendants.

2 The first is that the plaintiffs assert that each
3 matter was improperly removed and is therefore void because
4 the debtors have previously removed the entirety of each
5 litigation to this Court rather than just the claims against
6 the debtor parties.

7 The plaintiffs then argue that the cases should be
8 remanded because they satisfy -- under the circumstances,
9 satisfy the test for abstention and/or remand.

10 Your Honor, the first argument is easily dealt with.
11 The Roosevelt Inn Defendants' notices of removal state that
12 the claims being removed are those against the Roosevelt Inn
13 Defendants asserted by the plaintiff, the Roosevelt Inn
14 Defendants against additional defendants and other
15 crossclaims. The other -- the claims of the -- the claims
16 against the nondebtor parties are not subject of the notices
17 of removal filed by the debtors.

18 The second argument in connection with the void
19 argument, the plaintiffs cite to the Brown versus Jevic case,
20 it's a Third Circuit case out of 2009, for the proposition
21 that the Wyndham matters were not properly removed. The Brown
22 and the removal statute that are subject of Brown are
23 inapplicable to these cases, Your Honor. The matter in Brown
24 was removed pursuant to 28 U.S.C. § 1453 which deals with the
25 removal of class actions under the Class Action Fairness Act

1 of 2005 and that statute provides that an entire class action
2 needs to be removed. You can't -- you can't cherry pick the
3 claims. The Wyndham entities as well as the debtors removed
4 under a different statute, 28 U.S.C. 1452, and that statute
5 specifically says that a party can remove any claim or cause
6 of action. So the void argument, Your Honor, we think fails.

7 Remand and abstention, Your Honor, we briefed that
8 pretty extensively. I know the debtors did as well -- yes,
9 the debtors did and certainly the other nondebtor defendants
10 briefed the elements and, you know, I'm happy to address any
11 of the elements, Your Honor.

12 THE COURT: Do you agree, though, I mean, I think
13 the focus here really is on the Court's discretion to remand
14 claims on any equitable grounds. I mean do you agree that
15 that's sort of where we all are?

16 MR. ELIADES: I think that's the standard, Judge, in
17 light of the statutory -- I think that the discretion is
18 viewed in light of the statutory grant of jurisdiction in this
19 type of matter. So --

20 THE COURT: But once you're there, there still is
21 the Court's exercise of discretion, right?

22 MR. ELIADES: No question, Judge, yes.

23 THE COURT: Okay. I mean just not to put too fine a
24 point on it, but that's where I see this coming down and
25 that's why I went through all of these factors.

1 MR. ELIADES: Yes, and in looking at all of these
2 factors at least as the Wyndham Defendants do, that the
3 plaintiffs haven't met their burden by a preponderance of the
4 evidence that these factors militate in favor of permissive
5 abstention or remand.

6 We talked about the administration, the effect of
7 the administration on the bankruptcy estate. I think that
8 that factor weighs, frankly, in favor of Federal Court
9 jurisdiction.

10 The difficulty or unsettled nature of applicable
11 law, I think that does not favor the plaintiff. The Third
12 Circuit has noted time and again that Federal and State Courts
13 are equally capable of applying settled state case law to a
14 difficult set of facts.

15 THE COURT: But what if the plaintiff -- well, but
16 what if it is correct that this particular issue, the
17 Innkeeper liability for the alleged sex trafficking, what if
18 that is kind of a new knocking it up a notch, you know, it's a
19 new issue, would that not suggest that it should go back to
20 the State Courts to handle?

21 MR. ELIADES: Well, Your Honor, I haven't seen any
22 briefing that that is the case so I would be happy to address
23 that, but it doesn't sound to me like there's a new tort which
24 has been created.

25 THE COURT: Well, I guess the issue would be whether

1 that's an extension of pushing beyond where everything has
2 happened in the past, whether this is a new level. Not a new
3 cause of action necessarily, but it may be a new level of
4 liability. I'm just posing that as a thought.

5 MR. ELIADES: The comity factor, Judge, we think
6 weighs in favor of staying here. These cases, you know, are
7 Philadelphia cases. They'll be handled here in Philadelphia.

8 THE COURT: Oh, even the folks that were just here,
9 you have no idea where they came from. They've come as far
10 away as Northampton County and Lancaster and Berks County all
11 working very hard to get here to downtown Philadelphia.

12 MR. ELIADES: I'm sure, Judge. The right to a jury
13 trial is the same here as it was in the Court of Common Pleas.

14 THE COURT: No doubt.

15 MR. ELIADES: The degree of relatedness or
16 remoteness of the proceedings to the main bankruptcy case I
17 think is close. We don't think that prejudice favors the
18 plaintiff and we fall back to, you know, those cases that say
19 that, you know, abstention and even remand are extraordinary
20 remedies, right? They are the exception as opposed to the
21 rule when there is otherwise valid Federal Court jurisdiction.

22 THE COURT: Thank you.

23 MR. ELIADES: Thank you, Judge.

24 THE COURT: Did I hear that somebody wants to argue
25 that A.H. was too late to move -- yes. Oh, look at that, the

1 hand is still going up, okay.

2 MR. SMITH: Yes, Your Honor.

3 THE COURT: I don't mean to jump over anybody else
4 who's planning to argue before getting to this point, but why
5 don't you tell me what's up.

6 MR. SMITH: Sure. Thank you, Your Honor. Matthew
7 Smith from Saul Ewing on behalf of the additional defendant,
8 Eighty Eight, L.P. We are only involved in the A.H. case
9 specifically. We're joined as a third-party defendant. I
10 don't have a lot to add from what Wyndham's counsel spoke to
11 on the other issues. The only unique issue that I was going
12 to speak to was the untimeliness.

13 THE COURT: Yes.

14 MR. SMITH: So we filed a joint notice of removal
15 along with the Wyndham --

16 THE COURT: As I understand, the point is you filed
17 on time, but the wrong case.

18 MR. SMITH: Correct. So the 30-day window applies
19 from -- 30-day window in 1447, we cite case law in our brief
20 that it applies to bankruptcy removals under 1452 as well. We
21 also cite case law that it's a strict 30-day rule unless it's
22 an issue of subject matter jurisdiction. You know, cases
23 where it's 31 days, too bad. We also cited a case in our
24 brief where a similar issue came up, a party filed it on the
25 wrong docket. There were two cases removed. The cases had

1 been previously consolidated. The party filed a motion to
2 remand on the wrong docket, eventually later tried to file a
3 motion to remand on the correct docket, and the Court said,
4 you know, that's not just a clerical error. It's untimely.

5 So it's similar to what happened here. Plaintiff
6 filed a motion to remand in the 3277, the Roosevelt
7 Defendants' removal case, but not in 3450, which was the case
8 removed by codefendants Wyndham and Eighty Eight, L.P. So we
9 raised this issue in our response which was filed yesterday
10 because their motion had been untimely filed.

11 THE COURT: Let me pose a couple of familiar
12 principles. Going back to the shield and the sword, this
13 timing thing is being used as a sword, not so much a shield,
14 because nobody's going to say, wow, what a surprise this all
15 is, right? The filing was, albeit in the wrong case, it was
16 obviously a related case, right?

17 MR. SMITH: Yes.

18 THE COURT: And the Court has the ability to assign
19 an earlier filing if justice so requires, right?

20 MR. SMITH: So Your Honor --

21 THE COURT: Would you not agree with that?

22 MR. SMITH: In circumstances, yes.

23 THE COURT: Okay, you're going to tell me that the
24 statute says must be filed in 30 days.

25 MR. SMITH: Yes.

1 THE COURT: That's what you're going to tell me?

2 MR. SMITH: Yes, and --

3 THE COURT: Where does it say the Court cannot
4 exercise some equitable principles?

5 MR. SMITH: So there's case law saying that the
6 Court actually lacks authority once that 30-day window runs to
7 remand the case. Even if the Court chooses to, it can't.

8 THE COURT: What is the case for that strident view?

9 MR. SMITH: We cite multiple cases in our briefing.

10 THE COURT: Give me your best one.

11 MR. SMITH: Sure. I would say the --

12 THE COURT: It is different than a statute of
13 limitations.

14 MR. SMITH: Correct. Correct. The Roxbury case,
15 Third Circuit case, saying courts do not have the power to
16 remand for procedural defect once the 30-day statutory period
17 lapsed. So this issue came up in a case we cited a little
18 bit, as well, where the Court said we have power to correct
19 clerical mistakes, but this didn't fall under that umbrella.
20 Plaintiff filed a motion last night asking the Court to
21 retroactively deem its motion timely. They realized that, you
22 know, the days had passed.

23 THE COURT: This is all of our favorite nunc pro
24 tunc.

25 MR. SMITH: So I mean we would respectfully ask for

1 at least an opportunity to respond to that in writing. I just
2 got my hands on it late last night.

3 THE COURT: How much time do you need?

4 MR. SMITH: Not a lot.

5 THE COURT: When I ask that, it is, in part, a trick
6 question. One of the sacrosanct rules that I grew up with in
7 practice was what Henry Reed said, you may remember this,
8 would call the Goosey Gander Rule. So if a timing rule is
9 good for the goose, it's going to be good for the gander. So
10 when you tell me when you're going to file something under the
11 circumstances of this argument, you will want to file on time.

12 MR. SMITH: Absolutely, Your Honor.

13 THE COURT: Okay. So how much time do you need?

14 MR. SMITH: Ten days.

15 THE COURT: On this principle?

16 MR. SMITH: Seven days. Is there a time Your Honor
17 would suggest? Seven days? Five days?

18 THE COURT: Well, how about -- I'm sorry.

19 MR. SMITH: Whatever Your Honor picks, we'll get it
20 in on time.

21 THE COURT: How about by Tuesday, close of business
22 Tuesday?

23 MR. SMITH: Sure.

24 THE COURT: Does that run afoul of any major family
25 holiday or birthday, wedding, et cetera?

1 MR. SMITH: Nope. That sound good, Your Honor.

2 THE COURT: Good. Sounds good to me. Anything else
3 on A.H.'s problems?

4 MR. SMITH: No, Your Honor.

5 THE COURT: Speaking of problems, although I'm being
6 a little light on some of the features of this particular
7 argument, it is clear this is a super serious case involving
8 extremely serious issues for people, not just the plaintiffs,
9 of course, but the defendants and the various people involved
10 in the case, and as lawyers and judges, frankly, we all become
11 fairly comfortable with handling serious matters sometimes in
12 a relatively lighthearted way. Please do not misunderstand
13 me. I recognize this is a super serious case. The legal
14 principles are very serious as well. They're interesting, by
15 the way, but at the root of all of these cases, there are some
16 really very serious allegations if borne out of unspeakable
17 activity. So Tuesday close of business on this narrow issue.

18 MR. SMITH: Will do. Thank you, Your Honor.

19 THE COURT: Okay. Other comments, arguments? Yes,
20 sir -- wait, I've got one here. Come on up. Why don't you
21 get in line.

22 MS. FOREMAN: Melanie Foreman, Marshall Dennehey.

23 Your Honor, I represent Alpha-Centurion Security
24 Inc. --

25 THE COURT: Right.

1 MR. SMITH: -- only in the M.B. lawsuit.

2 THE COURT: Okay.

3 MR. SMITH: I don't want to belabor the points that
4 have already been very fully argued to you. I would simply
5 like to take the opportunity to make a few points to Your
6 Honor. Since this matter has been removed to the Eastern
7 District, there has already been more efficiency in this
8 lawsuit. All of the lawsuits, all five of them, have been
9 consolidated before Your Honor which was not the case in State
10 Court. As I mentioned, I only represent Alpha in the M.B.
11 lawsuit which was the lawsuit that was about to go to trial.
12 The State Court did not rule on any motions in limine in that
13 case, no rulings had been made, and the trial had not started.
14 Well, there had been a deposition. Nothing had been moved
15 into the record. So the trial had not, in fact, started.

16 This is indeed a very complex case, but it is not
17 complex because of the law that is at issue. Plaintiffs'
18 claims sound in negligence and negligent infliction of
19 emotional distress alone. There is a new statute in
20 Pennsylvania under the human trafficking laws. Plaintiff does
21 not have a claim under that statute. If she did, this may be
22 a different case and I would say, yes, it is unique, but as it
23 is, these are negligence claims and this Honorable Court is
24 more than able to determine those matters.

25 Your Honor, Mr. Marion mentioned some things that

1 Judge Chan in the Bankruptcy Court had advised. I was at that
2 hearing and so I'll try to shed a little more light on that.

3 The M.B. lawsuit does remain completely stayed.

4 There are no other hotels within that lawsuit. Judge Chan has
5 repeatedly advised the parties that she has no intention of
6 permitting any of the debtors' assets going to one potential
7 tort creditor simply because she was first in line. Judge
8 Chan has every intention of making sure that the alleged
9 victims, including M.B., have equal rights and that none
10 should have priority over the others. To that end, she's
11 ordered that the claimants as well as the insurers and all of
12 the other codefendants participate in the mandatory mediation
13 with Judge Frank. Remanding the M.B. matter when the
14 Bankruptcy Court is poised to try to resolve the matter and
15 where it remains stayed would not be in the best interest of
16 the parties and would be contrary to the statutes that my
17 colleagues have already explained to you.

18 Finally, Your Honor, though we are in the Eastern
19 District of Pennsylvania, we are certainly in Philadelphia,
20 and the plaintiff will certainly get a jury of her peers if we
21 remain in Federal Court.

22 Thank you.

23 THE COURT: Thank you. Okay, somebody -- yes, sir?

24 MR. MAHONEY: Your Honor, Harry Mahoney on behalf of
25 American Motor Inns, Inc. I think you alluded to this at the

1 beginning of the session. I just wanted to put on the record
2 that we would join in the arguments made by counsel for
3 defendant Wyndham.

4 THE COURT: Okay. Thank you.

5 Okay, others, before I go back to the beginning?

6 MR. HEINOLD: Your Honor, if you want me to respond
7 to Eighty Eight, L.P.'s untimeliness argument.

8 THE COURT: Why don't you do that now and then we'll
9 keep that separate.

10 MR. HEINOLD: So, Your Honor, it's undisputed we
11 filed it under the 3277 case which was the Roosevelt action
12 when it was the notice of removal was filed in the 3430
13 action. However, all the defendants had notice of the filing
14 on time as it was filed on September 1st which was within the
15 30-day period. The Wyndham Defendants, who are represented by
16 Mr. Heller and other attorneys at his office, were on the
17 attorney record of that 3277 case. Mr. Smith and the other
18 attorneys who represent Eighty Eight, L.P. were also on that
19 and, in fact, actually entered their appearance in that 3277
20 action the day before it was filed. Additionally, we sent a
21 copy by e-mail of the time-stamped version on the 2nd and when
22 Mr. Heller notified us on the 14th of -- that it was filed in
23 the wrong action, we immediately within the hour filed it
24 under the appropriate headings. As was mentioned by Mr.
25 Smith, we filed, and Your Honor acknowledged, we filed a

1 motion nunc pro tunc seeking that the motion be retroactively
2 determined to be timely as there is no prejudice to any of the
3 parties as they were well aware of the issues at hand. Each
4 have actually filed responses. I believe Mr. Heller may have
5 responded partially and incorporating his colleagues' other
6 arguments, but these are issues that have been responded to
7 and there has been no prejudice raised as to the timeliness.

8 THE COURT: Thank you. When you're falling on your
9 sword, just don't bleed on the carpet, all right?

10 MR. HEINOLD: Understood, Your Honor.

11 THE COURT: All right. I understand. The point I
12 was making to your opponent there is there is an underpinning.
13 We're all -- I can't remember what the actual quotation is
14 about, but, you know, misfilings, accidental clerical
15 misfilings, if that's what this was, happen to all of us and
16 there but for, you know, whatever goes -- John Branford is the
17 actual quotation. Ms. Greene, remind me, who was that quote?
18 Is that it?

19 THE LAW CLERK: I think so.

20 THE COURT: Yes. Okay, I think that issue which
21 you're going to focus on, folks, is going to be 30 days and 30
22 days, and that's all it needs, period, end of story, but I'll
23 leave that to you all to squabble about.

24 Ms. Marks, do you want to come back?

25 MS. MARKS: Yes, Your Honor. I'll be brief.

1 THE COURT: Okay.

2 MS. MARKS: Your Honor, certainly this Court is
3 capable of hearing personal injury matters. I never meant to
4 suggest otherwise.

5 THE COURT: No, no, please, I didn't take it that
6 way.

7 MS. MARKS: My only point, Your Honor, is that these
8 are novel applications of state law.

9 THE COURT: Isn't the statute a part of
10 anybody's claim specifically or not?

11 MS. MARKS: It is not, Your Honor. Initially, M.B.
12 filed her claim, there were common law negligence claims as
13 well as a claim under the Pennsylvania Human Trafficking Law,
14 however, it was determined that that law was not in effect at
15 the time M.B. was sex trafficked so there was an amendment of
16 the Complaint.

17 Your Honor, we are here under pretenses by the
18 Roosevelt Defendants to drag these cases out of Philadelphia
19 Court of Common Pleas. The plaintiffs have a right to
20 determine where their cases should be heard. They chose
21 Philadelphia. The citizens of Philadelphia are being deprived
22 of the opportunity to sit in judgment of the Roosevelt Inn and
23 other defendants involving hotels in Philadelphia County. The
24 Roosevelt Defendants are citizens of Philadelphia County.
25 Don't they want a jury made up of their peers? Defendants

1 have sent in a playbook for other defendants to file to
2 manipulate the Court to deprive plaintiffs of their place and
3 their chosen forum.

4 THE COURT: Would somebody be able to argue that if
5 the -- if a large settlement demand is what throws somebody
6 into bankruptcy, that there is a chilling effect of having
7 settlement discussions?

8 MS. MARKS: Your Honor, my --

9 THE COURT: What I heard was you dropped a big
10 demand on them, they became concerned because the number was
11 so high. If that's true, does that mean that every time
12 somebody gets a high demand that might be in excess of what
13 they think their assets are, they're going to scoot over to
14 Bankruptcy Court? And where's the good policy in that if
15 people are in favor of settlements?

16 MS. MARKS: Well, Your Honor, I don't think it's a
17 good policy if debtors or defendants like the Roosevelt
18 Defendants get to use the Bankruptcy Court proceedings as a
19 shield from liability. I don't think that would be a good
20 outcome. Our clients, you know, their objective is to expose
21 the hotels where they were sexually exploited and --

22 THE COURT: Well, let me ask the question that
23 actually does occur to me and here the issue is, is there not
24 fundamentally at least some difference that I'm going to get
25 to in a minute between the Federal Court in the bankruptcy

1 setting and State Court? What if a debtor has so little money
2 or in the way of assets has so little assets that it cannot
3 defend itself in State Court, but they can operate if they go
4 into the bankruptcy world? Are they not prejudiced
5 fundamentally by being made to defend without any assets and
6 the ability to defend in State Court? How can they put up a
7 fight if they have no money and no assets?

8 MS. MARKS: Your Honor, I think that the point is
9 the Bankruptcy Court can't determine the claims. The claims
10 have to be determined --

11 THE COURT: Well, no, that's why they get the
12 protection of the bankruptcy and they stay it while they kind
13 of collect themselves.

14 MS. MARKS: But plaintiffs' claims don't go away.
15 They have to be determined. There has to be some type of
16 judgment or verdict and why we're here today is the
17 determination as to where that should be held.

18 THE COURT: But there's also a when aspect to what
19 you're doing here as well because the notion is that you want
20 to be remanded to State Court and get back up and running
21 where you were going to be up and running.

22 MS. MARKS: Yes, Your Honor. Yes.

23 THE COURT: But what happens if, as a result of all
24 this, and there's a lack of resolution on the insurance
25 coverage, you have the Roosevelt Defendants basically left

1 defenseless because they have no wherewithal to defend
2 themselves. I'm posing this as a theoretical question and
3 does that not mean they should be allowed to stay in
4 Bankruptcy Court, stay the claim against them, and there we
5 have it?

6 MS. MARKS: Well, Your Honor, the Roosevelt
7 Defendants are being defended by counsel which is being paid
8 for by their insurance companies so I don't think that we have
9 that situation and it's the same -- what Your Honor presents
10 would be the same whether in State or Federal Court. The
11 Bankruptcy Court can't determine the plaintiffs' lawsuits.
12 They have --

13 THE COURT: No, but the Bankruptcy Court can stay
14 the proceedings.

15 MS. MARKS: And they have been stayed as to the
16 Roosevelt debtors.

17 THE COURT: Okay.

18 MS. MARKS: Your Honor, just one last point. These
19 cases are factually similar to the Boy Scout case where in
20 that case, the plaintiff filed in State Court, it was removed
21 to Federal Court as a result of a bankruptcy, and in that
22 court, the court of this District remanded those cases back to
23 State Court. And I would ask that Your Honor do the same and
24 remand M.B, C.A., B.H. and K.R.'s cases back to State Court.
25 Thank you.

1 THE COURT: Anything else from anybody? Now would
2 be the time if you're going to pop up and say something more.

3 Yes, sir?

4 MR. ELIADES: Your Honor, I just have one short
5 point.

6 THE COURT: Sure.

7 MR. ELIADES: On the issue of the effect of Federal
8 Court jurisdiction over the litigations on the administration
9 of the debtor's bankruptcy estates, as Your Honor's been
10 advised, the Bankruptcy Court has ordered a mediation of
11 claims involving the debtors and parties related to the
12 debtors in the Bankruptcy Court. That order leaves open the
13 possibility for the Bankruptcy Court to direct additional
14 parties to mediate these litigations. Wyndham and
15 other nondebtor --

16 THE COURT: They can only order people if those
17 other parties have some kind of a crossclaim, existing
18 crossclaim against them, right? I mean they can't just --

19 MR. ELIADES: And there's the jurisdiction issue,
20 Judge, which I think I'm getting to. Wyndham and other
21 nondebtor parties submitted statements to Your Honor
22 consenting to -- at least the Wyndham defendants did --
23 consenting to participate in a global mediation, whether that
24 mediation occurs in the Bankruptcy Court or whether it occurs
25 in the District Court, and to the extent that Your Honor would

1 choose to retain jurisdiction over these litigations, it is
2 within Your Honor's power to refer the matters to the
3 Bankruptcy Court for mediation only, to conduct a partial
4 referral, which would have an impact on the administration of
5 the debtor's bankruptcy.

6 Thank you, Judge.

7 THE COURT: Yes, sir.

8 MR. MARION: Your Honor, I just wanted to add to
9 remind Your Honor that Ms. Marks had indicated that there was
10 no allegation here of a bad faith bankruptcy filing by my
11 clients and that the steps my clients have taken both to file
12 the bankruptcy and to remove to this Court were in accordance
13 with the statutory authority granted by Congress.

14 Thank you.

15 THE COURT: Now's the time if anybody else wants to
16 say anything. Okay, we're adjourned. Thanks very much.

17 Actually, before I adjourn, I gave counsel after the
18 negotiations and until Tuesday close of business to address
19 further the filing and timing of the A.H. motion to remand.
20 It is my habit to give counsel after an argument that's had a
21 fair amount of give and take and a number of people and then
22 the Court asking questions to give counsel the opportunity to
23 supplement your papers. When I say supplement, I really mean
24 supplement. I don't mean to repeat what you've already said.
25 I'll give you all that opportunity as well under certain

1 rules. One of those rules is that you can file -- you can
2 submit no more than seven one-sided pages, double-spaced type
3 large enough for a normal human being to read, no footnotes,
4 no appendices, no attachments, and one-inch margins all around
5 and it must be seven pages that includes the caption that you
6 use and your signature line. Is there anything ambiguous
7 about what I mean about seven pages? Okay, I really would
8 confine yourself to anything that opposing counsel raised that
9 you might want to nail down, anything that the Court asks that
10 you want to discuss or address, and get that to me by the
11 close of business on Tuesday which would be, just to be
12 precise, Tuesday is October the 5th, close of business, my
13 close of business -- well, close of business is 5 o'clock.
14 Okay? If that really causes somebody some serious problems in
15 terms of the timing, let me know, but you all have so many
16 colleagues and capabilities that I'm sure that you can make
17 the best deadline.

18 Again, my apologies for holding you up with that
19 other case, but I hope you found it at least somewhat
20 interesting and thanks very much.

21 We're adjourned. Bye.

22 MS. MARKS: Thank you, Your Honor.

23 (Court adjourned)
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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of the proceedings in the above-entitled
matter.

Kathleen Feldman

Kathleen Feldman, CSR, CRR, RPR, CM
Official Court Reporter

Date: October 8, 2021

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